



State of Wisconsin
~~2011-2012~~ LEGISLATURE
2013-2014



LRB-23664

PJK:kph

0127
revised
r in not run

2013 ←
2011 ASSEMBLY BILL 390

November 23, 2011 – Introduced by Representative D. CULLEN, cosponsored by Senator RISSER. Referred to Committee on Financial Institutions.

(in 9-25)

SA
xref ✓

regenerate ↓

1 AN ACT *to repeal* 706.05 (9) and (10); and *to create* 708.15 of the statutes;

2 relating to: mortgage satisfaction } conveying homestead property,
and an exception to the real estate transfer fee

Analysis by the Legislative Reference Bureau

Insert A-1 → Under current law, the holder of any type of mortgage is required to record a satisfaction of mortgage within 30 days after the mortgagor completes full performance of the conditions of the mortgage. However, if the mortgage is fully performed and the mortgageholder receives by certified mail a written request from the mortgagor for a full satisfaction, the mortgageholder must record a satisfaction of mortgage within seven days or is liable to the mortgagor for actual damages plus penalty damages of \$100 for each day that the violation remains uncorrected, up to \$2,000 in penalty damages. This bill repeals those provisions and replaces them with mortgage satisfaction provisions that are similar to the Uniform Residential Mortgage Satisfaction Act (URMSA), except that, with the exception of affidavits of satisfaction, the new provisions apply to all mortgages, not just mortgages on residential property. Δ

Under the bill, a creditor who has a security interest in real property must record a satisfaction of the security instrument (mortgage) within 30 days after the secured creditor receives full payment of the secured obligation or payment as provided in a payoff statement provided by the creditor to the landowner. If the creditor does not do so within the required time, the creditor is liable to the landowner for \$500, plus any actual damages and reasonable attorney fees and court costs, but no punitive damages.

The bill provides another mortgage satisfaction option for mortgages on residential real property: recording an affidavit of satisfaction of a security

ASSEMBLY BILL 390

instrument. Under this option, ^{upon or at any time} if a secured creditor has not recorded a mortgage satisfaction within 30 days after full performance or payment as provided in a payoff statement by the residential property owner, a satisfaction agent authorized by the owner may give the secured creditor notice that the satisfaction agent may record an affidavit of satisfaction of the security instrument. Under the bill, only a title insurance company acting directly or through an authorized agent may act as a satisfaction agent. The bill specifies the information that must be contained in the notice that is sent to the secured creditor, such as that the satisfaction agent has reasonable grounds to believe that the property is residential real property and that the secured creditor has received full payment or payment as provided in a payoff statement. After providing the notice, the satisfaction agent may submit the affidavit of satisfaction to the register of deeds for recording if the secured creditor authorizes the satisfaction agent to do so or if the secured creditor does not, within 30 days after receiving the notice, record a satisfaction. The satisfaction agent may not record the affidavit of satisfaction, however, if the agent receives notice from the secured creditor that the secured obligation has not been satisfied or that the security instrument has been assigned, in which case the satisfaction agent must provide the notice to record an affidavit of satisfaction to the assignee. An affidavit of satisfaction that complies with the requirements in the bill is entitled to be recorded in the office of the register of deeds, and a recorded affidavit of satisfaction constitutes a satisfaction of the security instrument described in the affidavit. The bill contains penalties against a satisfaction agent who records an affidavit of satisfaction erroneously or with knowledge that the statements in the affidavit are false, and authorizes a satisfaction agent to charge fees for providing the notice and preparing and executing the affidavit.

^{business} The bill sets out the right of a person who is obligated under a security instrument to request a payoff statement from the secured creditor. The person or his or her authorized agent may give notice to the secured creditor requesting a payoff statement for a specified payoff date that is not more than 30 days from the date the notice is given. The secured creditor must issue a payoff statement within four days after the effective date of a notice that contains the information specified ^{the first} in the bill and may not charge the person for ~~one~~ ^{the person requests} payoff statement in any two-month period. ^{for} The bill specifies the information that the payoff statement must contain, and provides penalties against a secured creditor for not sending a timely payoff statement that substantially complies with the content requirements in the bill. If the payoff amount in a payoff statement is understated, the secured creditor may send a corrected payoff statement, but the secured creditor is prohibited from denying the accuracy of the payoff amount as against any person who reasonably and detrimentally relies on the understated amount. If the secured creditor receives payment as provided in an understated payoff statement, the secured creditor must still record a satisfaction of the mortgage within 30 days but may recover from the obligated party any amount that was incorrectly not included in the payoff statement.

In addition to the security instrument satisfaction provisions, the bill specifies acceptable methods for and the effective dates of providing notice under the bill. The

ASSEMBLY BILL 390

bill also provides for the recording of a document of rescission, which rescinds an erroneously recorded satisfaction or affidavit of satisfaction, keeping the security instrument in force.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 706.05^x (9) and (10)^x of the statutes are repealed.

SECTION 2. 708.15[✓] of the statutes is created to read:

708.15 Mortgage satisfaction. (1) DEFINITIONS. In this section:

(a) "Address for giving a notification" means, for the purpose of a particular type of notification, the most recent address provided in a document by the intended recipient of the notification to the person giving the notification, unless the person giving the notification knows of a more accurate address, in which case the term means that address.

(b) "Day" means calendar day.

(c) "Document" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(d) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(e) "Entitled person" means ^{any of the following: A 1.} a person liable for payment or performance of the obligation secured by the real property described in a security instrument, ^{or the} landowner. ^{4 2.}

(f) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

ASSEMBLY BILL 390

SECTION 2

(g) "Landowner" or "owner" means a person that, before foreclosure, has the right of redemption in the real property described in a security instrument. The term does not include a person that holds only a lien on the real property.

(h) "Notification" means a document containing information required under this section and signed by the person required to provide the information.

(i) "Payoff amount" means the sum necessary to satisfy a secured obligation.

(j) "Payoff statement" means a document containing the information specified in sub. (3) (d).

(k) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(L) "Recording data" means the date, document number, volume and page number, if any, that indicate where a document is recorded in the office of the register of deeds under s. 59.43.

(m) "Residential real property" means real property located in this state that is used primarily for personal, family, or household purposes and is improved by one to 4 dwelling units.

(n) "Secured creditor" means a person that holds or is the beneficiary of a security interest or that is authorized both to receive payments on behalf of a person that holds a security interest and to record a satisfaction of the security instrument upon receiving full performance of the secured obligation. The term does not include a trustee under a security instrument.

(o) "Secured obligation" means an obligation the payment or performance of which is secured by a security interest.

as set forth in a payoff statement by the secured creditor

ASSEMBLY BILL 390

1 (p) "Security instrument" means an agreement, however denominated, that
2 creates or provides for an interest in real property to secure payment or performance
3 of an obligation, whether or not it also creates or provides for a lien on personal
4 property.

5 (q) "Security interest" means an interest in real property created by a security
6 instrument.

7 (r) "Sign" means, with present intent to authenticate or adopt a document, any
8 of the following:

9 1. To execute or adopt a tangible symbol.

10 2. To attach to or logically associate with the document an electronic sound,
11 symbol, or process.

12 (s) "State" means a state of the United States, the District of Columbia, Puerto
13 Rico, the United States Virgin Islands, or any territory or insular possession subject
14 to the jurisdiction of the United States.

15 (t) "Submit for recording" means to deliver, with required fees and taxes, a
16 document sufficient to be recorded under this section, to the office of the register of
17 deeds under s. 59.43.

18 (u) "Title insurance company" means an organization authorized to conduct the
19 business of insuring titles to real property in this state.

20 (2) NOTIFICATION: MANNER OF GIVING AND EFFECTIVE DATE. (a) A person gives a
21 notification by doing any of the following:

22 1. Depositing it with the U.S. Postal Service with 1st class postage paid or with
23 a commercially reasonable delivery service with cost of delivery provided, properly
24 addressed to the recipient's address for giving a notification.

Insert 5-6

ASSEMBLY BILL 390

SECTION 2

2. Sending it by facsimile transmission, electronic mail, or other electronic transmission to the recipient's address for giving a notification, but only if the

~~recipient agreed to receive notification in that manner.~~

3. Causing it to be received at the address for giving a notification within the time that it would have been received if given in the manner provided in subd. 1.

(b) A notification is effective at any of the following times:

1. The day after it is deposited with a commercially reasonable delivery service for overnight delivery.

2. Three days after it is deposited with the U.S. Postal Service, with 1st class mail with postage prepaid, or with a commercially reasonable delivery service for delivery other than by overnight delivery.

3. The day it is given, if given as provided in par. (a) 2.

4. The day it is received, if given by a method other than as provided in par. (a) 1. or 2.

(c) If this section or a notification given under this section requires performance on or by a certain day and that day is a Saturday, Sunday, or legal holiday under the laws of this state or the United States, the performance is sufficient if performed on the next day that is not a Saturday, Sunday, or legal holiday.

(3) PAYOFF STATEMENT: REQUEST AND CONTENT. (a) An entitled person, or an agent authorized by an entitled person to request a payoff statement, may give to the secured creditor a notification requesting a payoff statement for a specified payoff date not more than 30 days after the notification is given. The notification must contain all of the following:

1. The entitled person's name.

Insert 6-23

ASSEMBLY BILL 390

2. If given by a person other than an entitled person, the name of the person giving the notification and a statement that the person is an authorized agent of the entitled person.

3. A direction whether the statement is to be sent to the entitled person or that person's authorized agent.

4. The address, facsimile transmission number, or electronic mail or other electronic transmission address to which the secured creditor must send the statement.

5. Sufficient information to enable the secured creditor to identify the secured obligation and the real property encumbered by the security interest.

(b) If a notification under par. (a) directs the secured creditor to send the payoff statement to a person identified as an authorized agent of the entitled person, the secured creditor must send the statement to the agent, unless the secured creditor knows that the entitled person has not authorized the request.

(c) 1. Except as provided in subd. 2., within 4 days after the effective date of a notification that complies with par. (a), the secured creditor shall issue a payoff statement and send it as directed under par. (a) 3. in the manner prescribed in sub. (2) for giving a notification.

2. If the person to whom the notification is given once held an interest in the secured obligation but has since assigned that interest, the person need not send a payoff statement but shall, within 4 days after the effective date of the notification, give a notification of the assignment to the person to whom the payoff statement otherwise would have been sent, providing the name and address of the assignee.

3. A secured creditor that sends a payoff statement to the entitled person or the authorized agent may not claim that the notification did not satisfy par. (a).

business

ASSEMBLY BILL 390

SECTION 2

1 (d) A payoff statement must contain all of the following:

2 1. The date on which it was prepared and the payoff amount as of that date
3 *Insert B-3*
4 including the amount by type of each fee, charge, or other sum included within the
5 payoff amount.

6 2. The information reasonably necessary to calculate the payoff amount as of
7 the requested payoff date, including the per diem interest amount *if applicable*

8 3. The payment cutoff time, if any, the address or place where payment,
9 including payment by electronic transmission, if available, must be made, and any
10 limitation as to the authorized method of payment.

11 (e) A payoff statement may contain the amount of any fees authorized under
12 this subsection not included in the payoff amount.

13 (f) A secured creditor may not qualify a payoff amount or state that it is subject
14 to change before the payoff date unless the payoff statement provides information
15 sufficient to permit the entitled person or the person's authorized agent to request
16 an updated payoff amount at no charge and to obtain that updated payoff amount
17 during the secured creditor's normal business hours on the payoff date or the
18 immediately preceding business day.

19 (g) A secured creditor must provide upon request one payoff statement without
20 charge during any 2-month period. A secured creditor may charge a fee of \$25 for
21 each additional payoff statement requested during that 2-month period. However,
22 a secured creditor may not charge a fee for providing an updated payoff amount
23 under par. (f) or a corrected payoff statement under sub. (4) (a).

24 (h) Except as otherwise provided in sub. (7), if a secured creditor to which a
25 notification has been given under par. (a) does not send a timely payoff statement
that substantially complies with par. (d), the secured creditor is liable to the entitled

Insert 8-22

ASSEMBLY BILL 390

1 person for any actual damages caused by the failure plus \$500, but not punitive
2 damages. A secured creditor that does not pay the damages provided in this
3 paragraph within 30 days after receipt of a notification demanding payment may
4 also be liable for reasonable attorney fees and costs.

5 (4) UNDERSTATED PAYOFF STATEMENT: CORRECTION; EFFECT. (a) If a secured
6 creditor determines that the payoff amount it provided in a payoff statement was
7 understated, the secured creditor may send a corrected payoff statement. If the
8 entitled person or the person's authorized agent receives and has a reasonable
9 opportunity to act upon a corrected payoff statement before making payment, the
10 corrected statement supersedes an earlier statement.

11 (b) Subject to par. (c) 1., a secured creditor that sends a payoff statement
12 containing an understated payoff amount may not deny the accuracy of the payoff
13 amount as against any person that reasonably and detrimentally relies upon the
14 understated payoff amount.

15 (c) This section does not do any of the following:

16 1. Affect the right of a secured creditor to recover any sum that it did not include
17 in a payoff amount from any person liable for payment of the secured obligation.

18 2. Limit any claim or defense that a person liable for payment of a secured
19 obligation may have under law other than this section.

20 (5) SECURED CREDITOR TO SUBMIT SATISFACTION FOR RECORDING; LIABILITY FOR
21 FAILURE. (a) A secured creditor shall submit for recording a satisfaction of a security
22 instrument within 30 days after the secured creditor receives full payment or
23 performance of the secured obligation or payment as provided in a payoff statement
24 under sub. (3) or a corrected payoff statement under sub. (4), whichever is applicable.

25 If a security instrument secures a line of credit or future advances, the secured

ASSEMBLY BILL 390

SECTION 2

obligation is fully performed only if, in addition to full payment or performance of the secured obligation or payment as provided in a payoff statement under sub. (3) or a corrected payoff statement under sub. (4), the secured creditor has received a notification requesting the secured creditor to terminate the line of credit or containing a statement sufficient to terminate the effectiveness of the provision for future advances in the security instrument.

(b) Except as otherwise provided in sub. (7), a secured creditor that is required to submit a satisfaction of a security instrument for recording and that does not do so by the end of the period specified in par. (a) is liable to the landowner for \$500, plus any actual damages caused by the failure, but not punitive damages, and any reasonable attorney fees and court costs incurred.

(c) Paragraph (b) applies to a secured creditor that receives full payment or performance of the secured obligation or payment as provided in a payoff statement under sub. (3) or a corrected payoff statement under sub. (4) on or after the effective date of this paragraph [LRB inserts date]. Section 706.05 (9) and (10), ~~2009~~ ²⁰¹¹ stats., applies to a secured creditor that received partial or full payment or performance of the secured obligation before the effective date of this paragraph [LRB insert date].

(6) FORM AND EFFECT OF SATISFACTION. A document is a satisfaction of a security instrument if it satisfies s. 706.05 (8).

(7) LIMITATION OF SECURED CREDITOR'S LIABILITY. A secured creditor is not liable under this section if all of the following apply:

(a) The secured creditor established a reasonable procedure to achieve compliance with its obligations under this section.

(b) The secured creditor complied with that procedure in good faith.

ASSEMBLY BILL 390

1 (c) The secured creditor was unable to comply with its obligations because of
2 circumstances beyond its control.

3 (8) SATISFACTION AGENT; NOTIFICATION TO CREDITOR OF AFFIDAVIT OF SATISFACTION.

4 (a) Only a title^{insurance} company, acting directly or through an authorized agent, may serve
5 as a satisfaction agent under this section. An affidavit of satisfaction under this
6 section is valid only for security instruments recorded against residential real
7 property.

8 (b) Upon, or at any time after, full payment or performance of the secured
9 obligation or payment as provided in a payoff statement under sub. (3) or a corrected
10 payoff statement under sub. (4), a satisfaction agent acting for and with authority
11 from the landowner may give the secured creditor a notification that the satisfaction
12 agent may submit for recording an affidavit of satisfaction of the security instrument
13 against residential real property. The notification must include all of the following:

14 1. The identity and mailing address of the satisfaction agent.

15 2. Identification of the security instrument for which a recorded satisfaction is
16 sought, including the names of the original parties to the security instrument.

17 3. A statement that the satisfaction agent has reasonable grounds to believe
18 all of the following:

19 a. That the real property described in the security instrument is residential
20 real property.

21 b. That the person to which the notification is being given is the secured
22 creditor.

23 c. That the secured creditor has received full payment or performance of the
24 secured obligation or payment as provided in a payoff statement under sub. (3) or a
25 corrected payoff statement under sub. (4).

ASSEMBLY BILL 390

SECTION 2

1 4. A statement that the satisfaction agent may sign and submit for recording
 2 an affidavit of satisfaction of the security instrument unless, within 30 days after the
 3 effective date of the notification, any of the following occurs:

4 a. The secured creditor submits a satisfaction of the security instrument for
 5 recording.

6 b. The satisfaction agent receives from the secured creditor a notification
 7 stating that the secured obligation remains unsatisfied. *Insert 12-7*

8 c. The satisfaction agent receives from the secured creditor a notification
 9 stating that the secured creditor has assigned the security instrument and
 10 identifying the name and address of the assignee.

11 (c) 1. A notification under par. (b) may be sent by a method authorized *and to the address specified in*
 12 (2); alternatively, a notification under par. (b) may be sent *by sub.* to the electronic or other
 13 address provided by the secured creditor on a payoff statement under sub. (3) (d) 3g.

14 2. A notification under par. (b) may be sent along with a notification, if any, to
 15 terminate a line of credit or future advances as provided in sub. (5) (a).

16 (d) The satisfaction agent is presumed to be acting for, and with authority from,
 17 the *owner* if the satisfaction agent, directly or through an agent, assisted in
 18 completing full payment or performance of the secured obligation or payment as
 19 provided in a payoff statement under sub. (3) or a corrected payoff statement under
 20 sub. (4). *entitled person*

21 (e) Nothing in this section requires a person to agree to serve as a satisfaction
 22 agent.

23 (9) AUTHORIZATION TO SUBMIT AFFIDAVIT OF SATISFACTION FOR RECORDING; FEES. (a)
 24 Subject to pars. (b) and (c), a satisfaction agent may sign and submit for recording

*** NOTE: Are my changes to the subdivision above OK?

by a method authorized in sub. (2) if different from the address specified in sub. (2) (c)

ASSEMBLY BILL 390

SECTION 2

1 4. A statement that the satisfaction agent may sign and submit for recording
2 an affidavit of satisfaction of the security instrument unless, within 30 days after the
3 effective date of the notification, any of the following occurs:

4 a. The secured creditor submits a satisfaction of the security instrument for
5 recording.

6 b. The satisfaction agent receives from the secured creditor a notification
7 stating that the secured obligation remains unsatisfied. *Insert 12-7*

8 c. The satisfaction agent receives from the secured creditor a notification
9 stating that the secured creditor has assigned the security instrument and
10 identifying the name and address of the assignee.

11 (c) 1. A notification under par. (b) may be sent by a method authorized by sub.
12 (2); alternatively, a notification under par. (b) may be sent to the electronic or other
13 address provided by the secured creditor on a payoff statement under sub. (3) (d) 3.

14 2. A notification under par. (b) may be sent along with a notification, if any, to
15 terminate a line of credit or future advances as provided in sub. (5) (a).

16 (d) The satisfaction agent is presumed to be acting for, and with authority from,
17 the *owner* if the satisfaction agent, directly or through an agent, assisted in
18 completing full payment or performance of the secured obligation or payment as
19 provided in a payoff statement under sub. (3) or a corrected payoff statement under
20 sub. (4). *entitled person*

21 (e) Nothing in this section requires a person to agree to serve as a satisfaction
22 agent.

23 (9) AUTHORIZATION TO SUBMIT AFFIDAVIT OF SATISFACTION FOR RECORDING; FEES. (a)
24 Subject to pars. (b) and (c), a satisfaction agent may sign and submit for recording

ASSEMBLY BILL 390

1 an affidavit of satisfaction of a security instrument against residential real property
2 that complies with sub. (10) if either of the following applies:

3 1. The secured creditor has not, to the knowledge of the satisfaction agent,
4 submitted for recording a satisfaction of a security instrument within 30 days after
5 the effective date of a notification complying with sub. (8) (b).

6 2. The secured creditor authorizes the satisfaction agent to do so.

7 (b) A satisfaction agent may not sign and submit for recording an affidavit of
8 satisfaction of a security instrument if it has received a notification under sub. (8)

9 (b) 4. b. stating that the secured obligation remains unsatisfied. *Insert 13-9*

Insert 13-10 → 10 (c) If a satisfaction agent receives a notification under sub. (8) (b) 4. c. stating
11 that the security instrument has been assigned, the satisfaction agent may not
12 submit for recording an affidavit of satisfaction of the security instrument without
13 doing both of the following:

14 1. Giving a notification of intent to submit for recording an affidavit of
15 satisfaction to the identified assignee at the identified address.

16 2. Complying with sub. (8) with respect to the identified assignee.

17 (d) A satisfaction agent may submit for recording an affidavit of satisfaction
18 that complies with this section even if full payment or performance of the secured
19 obligation or payment as provided in a payoff statement under sub. (3) or a corrected
20 payoff statement under sub. (4) was made before the effective date of this paragraph
21 [LRB inserts date].

22 (e) The satisfaction agent may charge a reasonable fee for sending the
23 notification under sub. (8) and preparing and executing the affidavit of satisfaction.

24 A fee charged by a satisfaction agent under this paragraph that does not exceed \$75 is
25 conclusively presumed to be reasonable.

not

ASSEMBLY BILL 390

SECTION 2

1 (10) CONTENT OF AFFIDAVIT OF SATISFACTION. An affidavit of satisfaction of a
2 security instrument against residential real property must do all of the following:

3 (a) Identify the original parties to the security instrument, the secured creditor,
4 the recording data for the security instrument, and, if necessary for proper indexing
5 of the affidavit, a legal description of the real property identified in the security
6 instrument.

7 (b) State the basis upon which the person signing the affidavit is a satisfaction
8 agent.

9 (c) State that the person signing the affidavit has reasonable grounds to believe
10 that the real property described in the security instrument is residential real
11 property.

12 (d) State that the person signing the affidavit has reasonable grounds to believe
13 that the secured creditor has received ^{either of the following: 1.} full payment or performance of the secured
14 obligation.

15 (e) State that the person signing the affidavit, acting with the authority of the
16 owner of the real property described in the security instrument, gave notification to
17 the secured creditor of its authorization to sign and submit for recording an affidavit
18 of satisfaction.

19 (f) State either of the following:

20 ~~2~~ 1. That more than 30 days have elapsed since the effective date of ~~that~~ ^{the}
21 notification, and the person signing the affidavit has no knowledge that the secured
22 creditor has submitted a satisfaction of the security instrument for recording and ^{insert 14-22} has
23 not received a notification that the secured obligation remains unsatisfied.

24 ~~1~~ 2. That the secured creditor authorized the person signing the affidavit to sign
25 and record an affidavit of satisfaction.

↑ move this up to be first

ASSEMBLY BILL 390

(g) Be signed by the satisfaction agent and contain a form of authentication authorized by s. 706.06 or 706.07.

(11) EFFECT OF AFFIDAVIT OF SATISFACTION. (a) An affidavit of satisfaction of a security instrument against residential real property that complies with the requirements of sub. (10) shall be entitled to record in accordance with s. 706.05 in the office of the register of deeds of the county in which the security instrument is recorded.

(b) Upon recording, an affidavit substantially complying with the requirements of sub. (10) constitutes a satisfaction of the security instrument described in the affidavit.

(c) The recording of an affidavit of satisfaction of a security instrument does not by itself extinguish any liability of a person for payment or performance of the secured obligation.

(12) LIABILITY OF SATISFACTION AGENT'S STATUTE OF LIMITATIONS. (a) 1. Except as provided in subd. 2., a satisfaction agent that records an affidavit of satisfaction of a security instrument erroneously is liable to the secured creditor for any actual damages caused by the recording and reasonable attorney fees and costs. An action under this subdivision shall be commenced within 2 years after the cause of action accrues or be barred.

2. A satisfaction agent that records an affidavit of satisfaction of a security instrument erroneously is not liable if the satisfaction agent properly complied with this section.

(b) A satisfaction agent that records an affidavit of satisfaction of a security instrument with knowledge that the statements contained in the affidavit are false

Insert 15-22

ASSEMBLY BILL 390

SECTION 2

1 is liable to the secured creditor for any actual damages caused by the recording and
2 reasonable attorney fee^s and costs. *Nothing in this paragraph precludes*

3 (c) This subsection does not preclude any of the following:

4 1. A court from awarding punitive damages on account of the conduct.

5 2. The secured creditor from proceeding against the satisfaction agent under
6 the law of this state other than this section.

7 3. The enforcement of any criminal statute prohibiting the conduct.

8 (13) DOCUMENT OF RESCISSION: EFFECT; LIABILITY FOR WRONGFUL RECORDING. (a)

9 In this subsection, "document of rescission" means a document stating that an
10 identified satisfaction or affidavit of satisfaction of a security instrument was
11 recorded erroneously, the secured obligation remains unsatisfied, and the security
12 instrument remains in force.

13 (b) If a person records a satisfaction or affidavit of satisfaction of a security
14 instrument in error, the person may execute and record a document of rescission.
15 Upon recording, the document rescinds an erroneously recorded satisfaction or
16 affidavit.

17 (c) A recorded document of rescission has no effect on the rights of any of the
18 following persons:

19 1. A person that acquired an interest in the real property described in a security
20 instrument after the recording of the satisfaction or affidavit of satisfaction of the
21 security instrument and before the recording of the document of rescission.

22 2. A person that would otherwise have priority over or take free of the lien
23 created by the security instrument.

ASSEMBLY BILL 390

1 (d) A person that erroneously or wrongfully records a document of rescission
2 is liable to any person injured thereby for the actual damages caused by the recording
3 and reasonable attorney fees and costs.

4 (14) RIGHT OF ACTION NOT AFFECTED. Nothing in this section affects a person's
5 right to bring an action under s. 847.09. ✓

6 **SECTION 3. Initial applicability.**

7 (1) NOTIFICATION. The treatment of section 708.15^{✓✓} (2) of the statutes first
8 applies to notifications given on the effective date of this subsection. ✓

9 (2) PAYOFF STATEMENT. The treatment of section 708.15^{✓✓} (3) and (4)^{✓✓} of the statutes
10 first applies to notifications requesting payoff statements, and payoff statements
11 that are requested, on the effective date of this subsection. ✓

12 (3) AFFIDAVIT OF SATISFACTION.

13 (a) The treatment of section 708.15^{✓✓} (8) of the statutes first applies to
14 notifications regarding affidavits of satisfaction that are given on the effective date
15 of this paragraph. ✓

16 (b) The treatment of section 708.15^{✓✓} (9), (10)^{✓✓}, (11)^{✓✓}, and (12)^{✓✓} of the statutes first
17 applies to affidavits of satisfaction that are recorded on the effective date of this
18 paragraph. ✓✓

19 (4) DOCUMENT OF RESCISSION. The treatment of section 708.15[✓] (13) of the
20 statutes first applies to documents of rescission that are recorded on the effective
21 date of this subsection. ✓✓

22

(END)

Insert 17-5

Insert 17-21

2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-01277ins
PJK:.....

INSERT A-1

set as 4-star note (4) Note: The analysis for the mortgage satisfaction portion of the draft has not been changed from the analysis with 2011 Assembly Bill 390. An updated analysis will be provided, if necessary, when the changes to the draft are finalized.

(END OF INSERT A-1)

INSERT A-2

although some technical modifications have been made
(4) Under current law, an instrument evidencing a conveyance of real property, such as a deed, must be signed by or on behalf of each grantor. Current law also provides that, with certain exceptions, if an interest in the homestead of a married person is alienated, such as by a sale of the property, the instrument evidencing the alienation must be signed by or on behalf of each spouse. Also under current law, the marital property provisions provide that a spouse may act alone in managing and controlling his or her own property that is not marital property or marital property ~~that is~~ held in his or her name alone, and that spouses must act together in managing and controlling marital property that is held in the names of both spouses. Therefore, because the marital property provisions specifically apply to property of a married person and are based on how the property is held and whether it is marital property, the bill removes the requirement that both spouses must sign the instrument of conveyance if the property is homesteaded *property*.

(4) Under current law, a real estate transfer fee must be paid when an ownership interest in real property is transferred. Current law contains various exceptions to the payment of the real estate transfer fee, however, including when real property valued at or under \$100 is transferred. The bill changes this real property value amount for the exception to \$1,000 or less.

(END OF INSERT A-2)

INSERT 1-1

X
1 SECTION 1. 77.25 (13) of the statutes is amended to read:

2 77.25 (13) Of real estate having a value of ~~\$100~~ \$1,000 or less.

History: 1971 c. 150; 1985 a. 39; 1987 a. 27; 1991 a. 39, *X* 202, 269; 1993 a. 112, 263, 307; 1995 a. 458; 1997 a. 140; 1999 a. 9, 162; 2001 a. 44; 2005 a. 206; 2009 a. 28.

3 SECTION 2. 422.306 (4) of the statutes is amended to read:

4 422.306 (4) ~~Within~~ Except as provided in s. 708.15, within 45 days after

5 payment by the customer of all sums for which the customer is obligated under a

6 consumer credit transaction other than one pursuant to an open-end credit plan, the

Ins 1-1 contd

creditor shall give or forward to the customer instruments which acknowledge payment in full, and release of any security interest when there is no outstanding secured obligation, and furnish to the customer or the customer's designee evidence of the release or assignment to such designee of any recorded lien on real estate and termination of any filed financing statement which perfected such security interest.

History: 1971 c. 239; 1991 a. 316.

SECTION 3. 428.104^x (1) of the statutes is amended to read:

428.104 (1) Any time a payment is made in cash, or any other time the method of payment does not itself provide evidence of payment, the creditor shall furnish the customer, without request, a written receipt, evidencing such payment. The customer shall be entitled upon request, free of charge, to an annual statement of account showing receipts and disbursements. ~~Upon~~ Subject to s. 708.15, upon payment in full of the customer's obligation, the creditor shall release any mortgage by either recording the necessary instrument and forwarding the same to the customer, or by forwarding a satisfaction of such debt to the purchaser of the real property subject to such satisfied mortgage, or the creditor of such purchaser.

History: 1973 c. 18.

SECTION 4. 706.02^x (1) (f) of the statutes is repealed.

(END OF INSERT 1-1)

INSERT 3-16

4 3. The settlement agent.

(END OF INSERT 3-16)

INSERT 5-6

4 (r) "Settlement agent" means the person responsible for the preparation of the settlement statement for the conveyance of real property.

↓

Ins 5-6 cont'd

****NOTE: This definition is somewhat circular. The term "settlement statement" is not used in the draft and appears in the statutes only once (in s. 422.202 (2) (b)). Since it is central to the definition of "settlement agent," it probably needs its own definition. There is a definition for "settlement agent" in s. 708.10 (1) (f). Would that definition work here?

(END OF INSERT 5-6)

INSERT 6-23

****NOTE: I did not remove "or an agent authorized by an entitled person to request a payoff statement," in this version of the draft. I assumed, perhaps incorrectly, that this was removed in the proposed draft because "settlement agent" was added to the definition of "entitled person." However, an entitled person, including a settlement agent, could authorize an agent, such as an attorney, to act on his or her behalf. Let me know if you really want only an entitled person, as defined in the draft, to be able to request a payoff statement. If so, I will modify the remainder of the draft by removing all provisions related to agents, except for satisfaction agents.

(END OF INSERT 6-23)

INSERT 8-3

- ↗* *Φ*
↓
- 1 . If the entitled person or the person's authorized agent specifically requests it,
2 the payoff statement shall include

(END OF INSERT 8-3)

INSERT 8-17

****NOTE: I retained "before the payoff date" after "change." Is this ok, or do you really want to remove "before the payoff date"?

(END OF INSERT 8-17)

INSERT 8-22

payoff —————

****NOTE: I have removed the secured creditor's ability to charge a fee for providing "an updated amount under par. (f)" because an updated amount is no longer an option under par. (f).

(END OF INSERT 8-22)

INSERT 12-7



Eno 12-7

1 ^{no G}, except that the satisfaction agent may submit for recording an affidavit of
2 satisfaction even if the satisfaction agent receives a notification that the secured
3 obligation remains unsatisfied if the satisfaction agent has reasonable grounds to
4 believe that the person who paid the payoff amount reasonably and detrimentally
5 relied upon an understated payoff amount

****NOTE: This language is perhaps somewhat unartful; however, I was trying to be consistent with the fact that this language is contained in the statement that the satisfaction agent sends to the secured creditor. One of the problems is that the uniform act consistently uses passive language that does not state who is doing what (i.e., who is relying; who is paying the payoff amount). Is it necessarily the satisfaction agent who reasonably and detrimentally relied, or could it be the landowner? Please feel free to modify.

(END OF INSERT 12-7)

INSERT 13-9

6 ^{no G}, unless the satisfaction agent has reasonable grounds to believe that the person
7 who paid the payoff amount reasonably and detrimentally relied upon an
8 understated payoff amount

(END OF INSERT 13-9)

INSERT 13-10

****NOTE: See my [✓]****NOTE after proposed s. 708.15 (8) (b) 4. b. [✓]

(END OF INSERT 13-10)

INSERT 14-14

9 ^G 2. Payment as provided in a payoff statement under sub. [✓](3) or a corrected
10 payoff statement under sub. ^{✓✓}(4).

(END OF INSERT 14-14)

INSERT 14-22

↓

1 *WFF* either of the following apply: *Ins 14-22*

2 *G* a. The person signing the affidavit

(END OF INSERT 14-22)

INSERT 14-23

3 *G* b. The person signing the affidavit has received a notification that the secured
4 obligation remains unsatisfied, but the person signing the affidavit has reasonable
5 grounds to believe that the person who paid the payoff amount reasonably and
6 detrimentally relied upon an understated payoff amount.

****NOTE: See my *✓*****NOTE after proposed s. 708.15 (8) (b) 4. *✓* b. *✓*

(END OF INSERT 14-23)

INSERT 15-22

****NOTE: I added "to the secured creditor" after "not liable," since that is how the
liability was limited in the language that was removed. OK?

(END OF INSERT 15-22)

INSERT 17-5

7 SECTION 5. 766.51^x (8)^x of the statutes is repealed.

(END OF INSERT 17-5)

INSERT 17-21

8 *G* *5* *5* HOMESTEAD. The treatment of sections 706.02[✓] (1) (f)[✓] and 766.51[✓] (8)[✓] of the
9 statutes first applies to a conveyance alienating an interest of a married person in
10 a homestead that is recorded on the effective date of this subsection.

(END OF INSERT 17-21)

Kahler, Pam

From: Peter C. Christianson <pcc@dewittross.com>
Sent: Tuesday, December 04, 2012 10:15 AM
To: Kahler, Pam
Subject: "She's really good"

That was Craig Haskin's comment this morning during a conference call about your work on the mortgage satisfaction draft.

He said that you picked up in a three hour meeting what it takes real estate lawyers up to twenty years of practicing to understand.

We will have a memo responding to all of your questions to you shortly. Thanks!

IRS Circular 230 Disclosure: To comply with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained herein (including any attachments), unless specifically stated otherwise, is not intended or written to be used, and cannot be used, for the purposes of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter herein.

This message is a PRIVATE communication. This message and all attachments are a private communication sent by a law firm and may be confidential or protected by privilege. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or use of the information contained in or attached to this message is strictly prohibited. Please notify the sender of the delivery error by replying to this message, and then delete it from your system. Thank you.

Barman, Mike

From: Kahler, Pam
Sent: Tuesday, December 04, 2012 11:36 AM
To: Barman, Mike
Subject: FW: Draft review: LRB -0127/P1 Topic: Mortgage satisfaction requirements
Attachments: 13-0127_P1.pdf.pdf

From: Cheri Hipenbecker [<mailto:cah@knightbarry.com>]

Sent: Tuesday, December 04, 2012 10:23 AM

To: Kahler, Pam

Cc: kgilster@wlta.org; Cheri Hipenbecker; Craig Haskins; Jim Gull; Mary Jo Radowicz; Tom Cullen; Peter C. Christianson

Subject: Draft review: LRB -0127/P1 Topic: Mortgage satisfaction requirements

Hi Pam – The legislative committee chairs of the Wisconsin Land Title Association just met via conference call and reviewed. Our comments are below. Your notes were extremely helpful – thanks for being so thorough. Happy Holidays.
Cheri

22 (r) "Settlement agent" means the person responsible for the preparation of the
23 settlement statement for the conveyance of real property.

****NOTE: This definition is somewhat circular. The term "settlement statement" is not used in the draft and appears in the statutes only once (in s. 422.202 (2) (b)). Since it is central to the definition of "settlement agent," it probably needs its own definition.

2013 – 2014 Legislature - 7 - LRB-0127/P1
PJKeov&sac:rs
SECTION 6

There is a definition for "settlement agent" in s. 708.10 (1) (f). Would that definition work here?

the definition of "settlement agent" here works for us. Unfortunately the definition in 708.10(1)(f) would NOT work because it's limited to agents hired by lenders; there are times in cash transactions when the buyer hires us.

13 (3) PAYOFF STATEMENT: REQUEST AND CONTENT. (a) An entitled person, or an agent
14 authorized by an entitled person to request a payoff statement, may give to the
15 secured creditor a notification requesting a payoff statement for a specified payoff
16 date not more than 30 days after the notification is given. The notification must
17 contain all of the following:

****NOTE: I did not remove ", or an agent authorized by an entitled person to request a payoff statement," in this version of the draft. I assumed, perhaps incorrectly, that this was removed in the proposed draft because "settlement agent" was added to the definition of "entitled person." However, an entitled person, including a settlement agent, could authorize an agent, such as an attorney, to act on his or her behalf. Let me know if you really want only an entitled person, as defined in the draft, to be able to request a payoff statement. If so, I will modify the remainder of the draft by removing all provisions related to agents, except for satisfaction agents.

18 1. The entitled person's name

we agree - an entitled person and his or her agent should be allowed to request a payoff statement

11 this subsection not included in the payoff amount.

12 (f) A secured creditor may not qualify a payoff amount or state that ~~it is~~ subject
13 to change before the payoff date.

****NOTE: I retained "before the payoff date" after "change." Is this ok, or do you really want to remove "before the payoff date"?

14 (g) A secured creditor must provide upon request one payoff statement without
15 charge during any 2-month period. A secured creditor may charge a fee of \$25 for

the language
"before" is fine;
however clarify please
insert "the payoff
amount"

14 (g) A secured creditor must provide upon request one payoff statement without
15 charge during any 2-month period. A secured creditor may charge a fee of \$25 for
16 each additional payoff statement requested during that 2-month period. However,
17 a secured creditor may not charge a fee for providing a corrected payoff statement
18 under sub. (4) (a).

****NOTE: I have removed the secured creditor's ability to charge a fee for providing
"an updated payoff amount under par. (f)" because an updated amount is no longer an
option under par. (f).

fine with us

6 b. The satisfaction agent receives from the secured creditor a notification
7 stating that the secured obligation remains unsatisfied, except that the satisfaction
8 agent may submit for recording an affidavit of satisfaction even if the satisfaction
9 agent receives a notification that the secured obligation remains unsatisfied if the
10 satisfaction agent has reasonable grounds to believe that the person who paid the
11 payoff amount reasonably and detrimentally relied upon an understated payoff
12 amount.

****NOTE: This language is perhaps somewhat unartful; however, I was trying to
be consistent with the fact that this language is contained in the statement that the
satisfaction agent sends to the secured creditor. One of the problems is that the uniform
act consistently uses passive language that does not state who is doing what (i.e., who is
relying; who is paying the payoff amount). Is it necessarily the satisfaction agent who
reasonably and detrimentally relied, or could it be the landowner? Please feel free to
modify.

language is fine -
certainly the
landowner and/or the
buyer and/or a
subsequent lender
and/or the settlement
agent could
reasonably and
detrimentally rely on
the payoff statement

16 (c) 1. A notification under par. (b) may be sent by a method authorized by and
17 to the address specified in sub. (2); alternatively, a notification under par. (b) may be
18 sent by a method authorized in sub. (2) to the electronic or other address provided
19 by the secured creditor on a payoff statement under sub. (3) (d) 3., if different from
20 the address specified in sub. (2).

****NOTE: Are my changes to the subdivision above OK?

makes perfectly good
sense.

17 2. The secured creditor authorizes the satisfaction agent to do so.
18 (b) A satisfaction agent may not sign and submit for recording an affidavit of
19 satisfaction of a security instrument if it has received a notification under sub. (8)
20 (b) 4. b. stating that the secured obligation remains unsatisfied, unless the
21 satisfaction agent has reasonable grounds to believe that the person who paid the
22 payoff amount reasonably and detrimentally relied upon an understated payoff
23 amount.

NOTE: See my *NOTE after proposed s. 708.15 (8) (b) 4. b.

perfect

22 b. The person signing the affidavit has received a notification that the secured
23 obligation remains unsatisfied, but the person signing the affidavit has reasonable
24 grounds to believe that the person who paid the payoff amount reasonably and
25 detrimentally relied upon an understated payoff amount.

perfect

2013 - 2014 Legislature

- 18 -

LRB-0127/P1
PJK:eev&sacrs
SECTION 6

NOTE: See my *NOTE after proposed s. 708.15 (8) (b) 4. b.

14 (12) LIABILITY OF SATISFACTION AGENT. (a) A satisfaction agent that records an
15 affidavit of satisfaction of a security instrument erroneously is not liable to the
16 secured creditor if the satisfaction agent properly complied with this section.

***NOTE: I added "to the secured creditor" after "not liable," since that is how the liability was limited in the language that was removed. OK?

ok

Cheri Hipenbecker, General Counsel

Knight Barry Title, Inc.

330 E Kilbourn Ave, #925

Milwaukee, WI 53202

Direct: (414) 727-4545 ext.4033 | Cell: (262) 939-1393

cah@knightbarry.com | www.knightbarry.com

Please note that I am out of the office on Mondays and Thursdays